

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 STEVEN MEYER, et al.,

4 Plaintiffs,

5 v.

11 CV 6268 (ALC)

6 UNITED STATES TENNIS ASSOCIATION,

7 Defendant.  
8 -----x

9  
10 New York, N.Y.  
11 September 25, 2012  
12 10:15 a.m.

13 Before:

14 HON. ANDREW L. CARTER, JR.

15 District Judge

16 APPEARANCES

17 ABBEY SPANIER RODD & ABRAMS, LLP

18 Attorneys for Plaintiffs

19 BY: ORIN R. KURTZ, ESQ.

20 AKIN GUMP STRAUSS HAUSER & FELD LLP (NYC)

21 Attorneys for Defendant

22 BY: NATHAN J. OLESON, ESQ.  
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1 (In open court)

2 THE CLERK: Can I have cause for status conference in  
3 case 11 CV 6268, Meyer, et al. v. United States Tennis  
4 Association. Counsel please state your appearance for the  
5 plaintiff.

6 MR. KURTZ: Good morning, your Honor. For the  
7 plaintiff, Orin Kurtz from Abbey Spanier Rodd & Abrams.

8 THE COURT: Good morning.

9 THE CLERK: For the defendant.

10 MR. OLESON: Good morning, your Honor. Nathan Oleson,  
11 Akin Gump Strauss Hauer & Feld, for defendant.

12 THE COURT: All right. Motions have been fully  
13 briefed. I'm not quite ready with a decision on that. But I  
14 just wanted to check in with the parties to see where we are in  
15 terms of the status with the rest of the case. Have there been  
16 any other settlement discussions, or just where we are in this  
17 case? Starting with the plaintiff.

18 MR. KURTZ: Your Honor, the case, as far as progress  
19 since the last time that we've been here, the Court will recall  
20 that we had received notice that there was a request for  
21 summary judgment with an exemption under the recreational or  
22 amusement establishment exemption under the Fair Labor  
23 Standards Act. We had requested some discovery on that. We've  
24 served the discovery, and after agreeing to an extension  
25 because it was served and with the prior response during the

1 run-up to the U.S. Open, we received the written responses last  
2 week and documents yesterday morning. I haven't had a chance  
3 to review them or raise any deficiencies yet with opposing  
4 counsel. But that's where we stand with that.

5 We're still hoping to send notice out to the umpires.  
6 We had made a motion under 29 U.S.C. 216(b), and the Court  
7 granted that motion at a hearing on July 13, and we believe the  
8 time is ripe now to send that motion out. There were some  
9 arguments by the USTA about delaying the notice until after the  
10 U.S. Open, and the U.S. Open is now over.

11 There's been no dispute, there's no real dispute, with  
12 the exception of possibly one term on the content of the  
13 notice. All we'd need is a class list with e-mail addresses  
14 and street addresses, and we can send that notice out within  
15 seven days of receiving them. That's where we stand at this  
16 time.

17 THE COURT: OK. Thank you, Mr. Kurtz.

18 Mr. Oleson.

19 MR. OLESON: Thank you, your Honor. Mr. Kurtz is  
20 correct. We have had the discovery they served on the seasonal  
21 exemption. It came in a few weeks after the prior conference  
22 we had back in June. We were poised to respond to that, but in  
23 the run-up to the Open we had to request an extension until  
24 afterwards. We served those responses last week, as Mr. Kurtz  
25 noted.

1 As Mr. Kurtz also noted, we've been requesting leave  
2 to file a motion for summary judgment since, I think, May now.  
3 I don't know if he believes he needs any further discovery  
4 beyond the documents that he's asked for. I know he asked for  
5 one deposition at the June conference. But we're prepared to  
6 finish that up in short order and go forward and file our  
7 motion.

8 Mr. Kurtz also referenced the motion to send notice,  
9 under 216(b), and your Honor received some briefing,  
10 supplemental briefing, on the timing of that notice. He is  
11 correct that we did point out that we believe sending the  
12 notice during the Open would be inappropriate. But we also  
13 argued, your Honor, in that brief, under the precedent in this  
14 district and both under Rule 23 and under 216(b), that you do  
15 have the discretion to wait to consider the motion for summary  
16 judgment first. We believe that would be the most efficient  
17 way to resolve the case. Obviously, if the four named  
18 plaintiffs had no claims, there's no need to bring the class in  
19 to then figure out what to do with them after.

20 And again, that's in our papers in the *Philip* case and  
21 in the *Starbucks Gratuity* case. We believe it's proper to  
22 defer the decision or the sending of the notice pending our  
23 summary judgment motion.

24 THE COURT: OK. Thank you.

25 Now, plaintiff's counsel, you indicated that you

1 received a response to some discovery requests last week. How  
2 soon will you know if you need to follow-up with anything else?

3 MR. KURTZ: Well, I know now that there are some  
4 categories of documents that the written requests indicated  
5 would not be produced that we do deem essential to any  
6 opposition for motion for summary judgment. I will be able to  
7 review the documents and get a letter to the United States  
8 Tennis Association or confer on the phone by this coming  
9 Monday.

10 THE COURT: All right. Let's do that. Let's have the  
11 parties file a two-week status report on October 22. I will  
12 have a status on the case, in particular this discovery  
13 regarding the partial summary judgment motion. And let's have  
14 that filed on October 22, see where we are at that point.

15 Anything else for plaintiff today?

16 MR. KURTZ: No, your Honor. Just because it wasn't  
17 expressly addressed, I just wanted to follow up on the notice  
18 and see if your Honor has a decision on the timing that.

19 THE COURT: Not at this time.

20 Anything else, for the defendant?

21 MR. OLESON: No, your Honor.

22 THE COURT: All right. Thank you very much.

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